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No. 88-218

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

WAYNE PIERSON,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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I.

Respondent's position that police action was not flagrant is erroneous and contrary to this Court's prior opinions, where the police without a warrant and without probable cause seized a sixteen year old at his home, took him from the company of his parents by deception, and then perjured themselves in court in a continued attempt to violate petitioner's Fourth Amendment rights.

Implicit in the finding of the trial court is that: the police without anything even approaching probable cause[1] seized a sixteen year old at his house, by deception took him out of his "parents"[2] presence, lied to his parents as to why they wanted to speak to him, never told his parents they were taking him to the police station, seized petitioner for the purpose of interrogation, held petitioner against his will until he was questioned, and failed to have a juvenile officer present as required by State statute. The representation of the State of Illinois that such conduct is not flagrant because

1. Petitioner was arrested based upon an uncorroborated anonymous tip.

2. It was from the presence of his grandmother and common law grandfather.

petitioner was not beaten, is contrary to this Court's specific holding in Taylor v. Albama, 457 U.S. 687, 73 L.Ed.2d 314 (1982). The Court in Taylor specifically found that a situation as here is a most flagrant violation. The Court stated:

> "Finally, the State argues that the police conduct here was not flagrant or purposeful, and that we should not follow our decisions in Brown and Dunaway for that reason. However, we fail to see any relevant distinction between the conduct here and that in Dunaway. In this case, as in Dunaway, the police effectuated an investigatory arrest without probable cause, based on an uncorroborated informant's tip, and involuntarily transported petitioner to the station for interrogation in the hope that something would turn up. The fact that the police did not physically abuse petitioner, or that the confession they obtained may have been 'voluntary' for purposes of the Fifth Amendment, does not cure the illegality of the initial arrest." Taylor v. Alabama, 457 U.S. 687, at 693.

The State's argument in support of the Appellate Court's determination of lack of flagrancy (Respondent's Brief, pp. 14-15) is inaccurate. As found by the trial court, there never was a request to petitioner's parents to question petitioner at the police station. Even the Appellate Court admitted that the trial court found that petitioner was taken out of his house through police deception.[3]

The officers' conduct is most flagrant because it was action done in bad faith. Leon v. United States, 468 U.S.

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3. The Appellate Court stated:

> "Although the trial court found that the police used deception in gaining initial access to the defendant, the deception apparently ended at the defendant's house." (App., p. 23)

897, 82 L.Ed.2d 677 (1984). Any experienced officer would know that even with probable cause (and here there was none) a warrant is necessary for an arrest at a person's home. Payton v. New York, 455 U.S. 573, 63 L.Ed.2d 639 (1980). As good faith avoids application of the exclusionary rule, bad faith must cause strict application.

What makes the officers' action more flagrant than in Taylor, requiring invoking the full force of the exclusionary rule, is that the police in furtherance of their attempt to violate Petitioner's Fourth Amendment rights, committed perjury. The trial court stated:

> "The Court finds that the defendant did not voluntarily go to the police station; the defendant was illegally detained by police; he was not free to

> leave, as was suggested by the State.
>
> The Court rules that the police had no probable cause for the initial arrest of the defendant at his home, and I will state that I do not believe the police officers' testimony in this regard; that he was free to leave.
>
> Relative to the initial arrest, I do believe the testimony which was offered by the Defense witnesses concerning police conduct at the defendant's home, and I disbelieve the officers' testimony." (Tr. 206) (Emphasis added.)

Where the police action is so flagrant, subsequently obtained probable cause should not remove the taint because it does not remove the benefit gained by the police through their unconstitutional seizure. In Murray v. United States, 487 U.S. ___, 101 L.Ed.2d 472 (1988), this Court held that the exclusionary rule, as applied, must not permit the government to be in either a better or worse

position than before the unconstitutional act. The police by isolating him has obtained a definite benefit from the illegal conduct. Petitioner has been removed from his home--a secure setting among his family who might assist him in requesting or obtaining counsel--to the secluded police station. In seclusion a sixteen year old is less likely to request a lawyer or advice of family.

The error of the respondent's position, i.e., that Miranda and independent probable cause removes taint, is that this position provides no incentive for the police to abide by the Constitution and strong incentive to violate the Fourth Amendment. The subsequent independent probable cause and Miranda advice rule suggested by respondent provides the police incentive

to violate the Fourth Amendment. They have incentive to do just what was done here--round up suspects without probable cause, and hope one accuses another so there is now probable cause and then hope that a statement is given. Such police conduct is just what the Fourth Amendment was designed to prevent.

The opinion of the State Appellate Court is in direct contradiction of the decisions of this Court that seizing a person at his house without even a semblance of probable cause, transportation to the police station, holding him against his will at the police station for an investigation and interrogation is a flagrant violation of the citizen's rights. Taylor v. Alabama, supra; Dunaway v. New York, 442 U.S. 200,

60 L.Ed.2d 824 (1979); Brown v. Illinois, 422 U.S. 590, 45 L.Ed.2d 416 (1975).

This case presents to the Court crucial issues that should be resolved.

Respectfully submitted,

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